



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-1040]

RIN 1625-AA09

Drawbridge Operation Regulation; Long Island, New York
Inland Waterway from East Rockaway Inlet to Shinnecock
Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulations that govern the Wantagh State Parkway Bridge, mile 16.1, across Goose Creek at Jones Beach, New York, and revising the regulations that govern the Captree State Parkway Bridge, mile 30.7, across the State Boat Channel at Captree Island, New York. The Wantagh State Parkway Bridge was replaced with a fixed bridge and the drawbridge operation regulations are no longer necessary. The method for contacting the bridge tender at the Captree State Parkway Bridge changed several years ago and this action will update the regulations to reflect the present contact protocol.

DATES: This rule is effective [INSERT DATE OF PUBLICATION]

IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG-2012-1040 and are available by going to <http://www.regulations.gov>, inserting USCG-2012-1040 in the "keyword" box, and then clicking "search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, 212-668-7165, judy.k.leung-yee@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Wantagh State Parkway Bridge that once required drawbridge operation regulations was replaced with a fixed span bridge; therefore, these regulations are no longer applicable and shall be removed. The protocol in the existing regulations to contact the bridge tender for bridge openings at the Captree State Parkway Bridge via a telephone located on the bridge pier is no longer accurate since the telephone was removed many years ago. This action will update the present protocol to contact the bridge for openings which is to call the number posed at the bridge. It is unnecessary to publish a notice of proposed rulemaking because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the Wantagh State Parkway Bridge draw operation requirements under 33 CFR 117.799(i), thus removing a regulatory restriction on the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The bridge has been replaced with a fixed span bridge and this rule merely requires an administrative change to the Federal Register, in order to omit a regulatory requirement that is no longer applicable or necessary and revise the contact method at the Captree State Parkway Bridge which has been obsolete for many years and will simply be updated to reflect the present protocol.

B. Basis and Purpose

The drawbridge operation regulations for the Wantagh State Parkway Bridge at mile 16.1, across Goose Creek, at Jones Beach, New York, and the Captree State Parkway Bridge are listed at 33 CFR 117.799(i).

The Wantagh State Parkway Bridge was replaced with a fixed span structure; therefore, the Coast Guard is removing the Wantagh State Parkway Bridge from the regulations because they are no longer necessary. The drawbridge

operation regulations for the Captree State Parkway Bridge will not be removed; however, the contact method will be changed to calling the number posted at the bridge for bridge openings. Formerly there was a telephone located at the bridge pier to call the tender. That phone was removed many years ago.

C. Discussion of Final Rule

This final rule revises the drawbridge operation regulations listed at 33 CFR 117.799(i), that govern the operation of the Wantagh State Parkway Bridge, mile 16.1, across Goose Creek, at Jones Beach, New York, and the Captree State Parkway Bridge, mile 30.7, across the State Boat Channel, at Captree Island. The Wantagh State Parkway Bridge was replaced with a fixed span bridge and as a result, we are revising paragraph (i), by removing the Wantagh State Parkway Bridge from the regulations. The regulations for the Captree State Parkway Bridge will not be removed by this action; however, the contact instructions in the existing regulation to contact the tender will be revised because the phone formerly located at the bridge fender to contact the tender was removed many years ago.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based a number of these statutes

or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be "significant" under that order because it is an administrative change and does not affect the way vessels operate on the waterway.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since this drawbridge has been removed and replaced with a fixed

bridge and the regulation governing drawbridge operations for this bridge is no longer necessary. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities

3. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

5. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate,

or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have a taking implication under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant

rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.799, revise paragraph (i) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(i) The draw of the Captree State Parkway Bridge at mile 30.7, across the State Boat Channel, at Captree Island, shall open on signal if at least a one half hour advance notice is given by calling the number posted at the bridge as follows:

(1) Every other hour on the even hour.

(2) From April 1 through October 31, on Saturday, Sunday, and Federal holidays every three hours beginning at 3 a.m.

* * * * *

Dated: December 17, 2012

Daniel B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

[FR Doc. 2013-02083 Filed 01/30/2013 at 8:45 am; Publication
Date: 01/31/2013]